Supreme Court, U.S.
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86-424

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1986

RODNEY F. STICH

Appellant,

vs.

Emma W. Stich,

Appellee.

On Appeal from the Court of Appeal
and the Supreme Court of the
State of California

APPELLEE'S MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

I. DOES THIS COURT HAVE JURISDICTION TO DECIDE AN APPEAL IN WHICH APPELLANT ARGUES FOR THE FIRST TIME BEFORE THIS COURT THAT STATE STATUTES ARE UNCONSTITUTIONAL?

II. WAS APPELLANT SUBJECT TO THE CALIFORNIA COURT'S JURISDICTION?

III. DOES THE RIGHT TO INTERSTATE TRAVEL AND THE DUE PROCESS CLAUSE PROVIDE A RIGHT TO OBTAIN AN EX PARTE MEXICAN DIVORCE DECREE AND HAVE THAT DECREE RECOGNIZED IN THE STATE COURTS OF CALIFORNIA?

IV. IN A DIVORCE ACTION, PENDING A DIVISION OF THE MARITAL ESTATE, MAY THE STATE COURT ORDER A PARTY TO PAY TEMPORARY SPOUSAL SUPPORT AND ATTORNEYS' FEES AFTER A HEARING AT WHICH IT IS DEMONSTRATED THAT AN EX PARTE PRIOR MEXICAN DIVORCE DECREE IS PROBABLY INVALID?

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Appellee, EMMA W. STICH, respectfully moves this Court to dismiss this appeal or affirm the judgment of the Court of Appeal of the State of California. Appellee's motion is made pursuant to Supreme Court Rule 16(1)(b) on the grounds that the Court does not have appellate jurisdiction and that the appeal does not present a substantial federal question.

STATEMENT OF THE CASE

This is an appeal pursuant to 28 U.S.C. §1257(2), from a final judgment entered on April 24, 1985 by the California District Court of Appeal. That judgment affirmed a trial court's order in a divorce action granting appellee temporary spousal support and attorneys' fees pending division of the marital estate. In re Marriage of Stich, 169 Cal.App.3d 64 (1985).

A. STATEMENT OF FACTS

Emma and Rodney Stich were married on September 5, 1943 in the State of Texas. In 1950, the Stiches moved from Texas to California where they resided until 1962. During their stay in California, the Stiches acquired several parcels of real property. Over the years of the marriage, however, appellant unlawfully obtained quitclaim deeds from appellee as to each of these properties.

In December of 1965, appellant travelled to Juarez, Mexico in order to obtain an ex parte divorce. Immediately upon his arrival in Mexico, appellant obtained an attorney for himself and for appellee and filed papers for divorce. The final decree of divorce was entered on January 31, 1966, some sixty days

later.[1] Immediately upon entry of the divorce decree, appellant left Mexico and returned to the United States.

Appellant represented to the Mexican court - - and the divorce decree stated - - that the parties had no community property and that appellee was not entitled to child or spousal support.

Appellee was never contacted by the lawyer appellant claims to have obtained for her and was not otherwise represented in the Mexican proceeding. Nor did appellee have notice of the entry of the final decree.

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[1]It is telling that nowhere in his 45 page jurisdictional statement does appellant advise this Court that his prior "divorce decree" was issued by a Mexican court, rather than by the court of a sister-state.

B. PROCEEDINGS IN THE TRIAL COURT

On December 6, 1982, appellee petitioned for dissolution of the marriage in the California Superior Court in and for the County of Solano. Simultaneously, she moved the court, pursuant to California Civil Code §§ 4357 and 4370, for spousal support and attorneys' fees while the divorce action was pending.[2] In late December, appellee took appellant's deposition.

In response to the noticed motion for temporary support and attorneys'

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[2]California Civil Code §4357 provides in part: "During the pendency of any proceeding . . . [for dissolution of marriage] the Superior Court may order the husband or wife . . . to pay any amount that is necessary for the support and maintenance of the wife or husband . . . ."

Civil Code §4370(a), provides in part: "During the pendency of any proceeding under this part, the court may order any party . . . to pay such amount as may be reasonably necessary for the cost of maintaining or defending the proceeding and for attorneys fees . . . ."

fees, appellant urged that the existence of the prior Mexican divorce decree precluded any of the relief requested by appellee and he moved to quash the proceedings. Prior to the hearing, the parties submitted extensive declarations and legal briefs on this point. Appellant, himself, submitted three separate declarations, and his lawyers filed four memoranda of points and authorities pertaining to the validity of the Mexican decree. Virtually all of appellee's argument that appellant had not established domicile in Mexico was based on appellant's own deposition testimony and declarations.

On February 25, 1983, the Honorable Dwight C. Ely conducted a hearing on appellee's request for temporary support and attorneys' fees, and on appellant's motion to quash. The court heard

extensive argument on the legal issues. [3] After the hearing, appellant filed two more declarations, and two additional briefs, bringing the total of briefs he had submitted to six.

On May 10, 1983, Judge Ely, on this considerable record, noted the probable invalidity of the Mexican decree and granted appellee's motion for temporary spousal support and attorneys' fees, but deferred action on the motion to quash until a trial could be conducted on the issue of the validity of the Mexican divorce.[4] In his ruling, Judge Ely

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[3]The court took under submission appellant's motion to quash, while allowing both parties further briefing on that issue.

[4]Appellant states somewhat disingenuously that a final decision had not been rendered on his Motion to Quash when the jurisdictional statement was first filed on December 22, 1986 (sic).

(Footnote Continued)

observed that respondent's challenge to the Mexican decree:

> . . . is based upon lack of jurisdiction of that court, which in turn in based upon lack of domicile ot one or both parties in that jurisdiction. There is sufficient shcwing when the evidence and law indicate a fair or reasonable probability of success at the trial. If that showing is made, temporary support and attorneys' fees can be awarded.

After careful review of the

(Footnote Continued)
Jurisdictional Statement at 23. However, as he knows, the Honorable William E. Jensen denied the Motion to Quash on January 14, 1986.

After hearing evidence in a five-day trial and reading voluminous briefs, Judge Jensen denied the motion to quash, finding: (1) the Mexican divorce is invalid under the laws of Mexico and the State of Chihuahua; (2) appellant was not domiciled in Chihuahua, Mexico; (3) appellee did not appear, was not represented, and therefore did not participate in the divorce proceedings; (4) since neither party established domicile in Mexico, Mexico had no interest in having its law applied to the divorce proceedings; and (5) appellee was not estopped to contest the validity of the Mexican divorce. The Court may take judicial notice of the decision pursuant to Fed. R. Evid. 201(f).

> evidence and law, the court is convinced that the test had been met. Respondent obviously went to Mexico for the dissolution. He barely met the time requirements and returned to the United States immediately upon receipt of his decree.

See Appendix "C" attached to Jurisdictional Statement.

Based on the foregoing findings, the trial court ordered appellant to pay temporary spousal support in the sum of $400 per month and attorneys' fees in the sum of $2,500. Appellant appealed to the California District Court of Appeal.

C. OPINION OF THE DISTRICT COURT OF APPEAL

The District Court of Appeal affirmed the decision of the trial court and awarded sanctions against appellant for abuse of the appellate process. On appeal, appellant had urged that the California court must recognize the Mexican divorce decree because he had become a domicile of Mexico and because appellee should be estopped to contest the validity of that decree. At no time in those proceedings did appellant challenge the constitutionality of either Civil Code §4357 or Civil Code §4370.

In its decision, the appellate court held:

> . . . Where the subject matter or jurisdiction of the California court is challenged in a marital dissolution action, based upon the existence of a prior decree of divorce issued by another jurisdiction, the validity of which is in dispute, California courts have

> jurisdiction to issue temporary orders pending the adjudication of the validity of the foreign decree. The issuance of such an order is not an abuse of discretion if the court determines that there is a reasonable probability of success in establishing the invalidity of the foreign decree and the proceeding has been instituted in good faith.

167 Cal.App.3d at 229.

The appellate court then held that appellee had established that there is a "reasonable probability" that the Mexican decree was invalid." Id. at 231-33.

After extensive examination of the factual background of the case, the appellate court also awarded sanctions against appellant in the amount of $10,000 for his abuse of the appellate process. In essence, the court determined that appellant had appealed the temporary spousal support and attorneys' fees orders and stayed

enforcement of those orders in an effort to "starve" appellee into submission.[5]

On August 28, 1985, the California Supreme Court denied appellant's petition for review. Appellant now attempts to invoke the appellate jurisdiction of this court.

ARGUMENT

I. THIS COURT IS WITHOUT APPELLATE JURISDICTION IN THIS CASE.

Appellant improperly invokes the appellate jurisdiction of this court pursuant to 28 U.S.C. §1257(2). The appeal is predicated upon the contention that as applied to the facts of this

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[5]In the view of the Court of Appeal, the stay of such support orders pending appeal poses a potential for massive abuse of the appellate process in family law cases. By imposing sanctions, the court sought to deter resort to the appellate process where the appeal is intended solely to procure a tactical advantage over the spouse who has neither funds to support herself nor access to the marital estate. 169 Cal.App.3d at 75-78.

case, the California statutes providing for temporary spousal support and attorneys' fees are contrary to the United States Constitution. In the state court, however, appellant did not object that the statutes themselves were invalid, but rather that the effect of the state court's exercise of jurisdiction and the circumstances of this case deprived him of various rights under the Constitution.

In Hanson v. Denckla, 357 U.S. 235, 244 (1958) this Court held that where the jurisdictional statute itself was not challenged in the lower courts, this court is without jurisdiction of the appeal and it must be dismissed.

II. THE CALIFORNIA COURT HAD PERSONAL JURISDICTION OVER APPELLANT IN THE DISSOLUTION PROCEEDINGS.

Appellant repeatedly claims that the court in the dissolution proceedings did not have jurisdiction over him. His jurisdictional statement evidences his

failure to understand the concept of jurisdiction, particularly the difference between personal and subject-matter jurisdiction.

At the time appellee filed her petition for dissolution, appellant was a resident of Solano County, California. Appellant was personally served with the petition in Solano County on December 9, 1982. Clearly, the court obtained personal jurisdiction over appellant at that time.

Further, contrary to appellant's assertion that he did not make a general appearance prior to the filing of his Motion to Quash, appellant made a general appearance by filing a Responsive Declaration to Order to Show Cause, Points and Authorities, and Income and Expense Declaration, all dated December 27, 1982, and a Supplemental Declaration dated January 18, 1983. In addition, on February 18,

1983, in the same papers whereby appellant made his Motion to Quash, he also moved for dismissal and summary judgment, and concurrently with the filing of the Motion to Quash, appellant filed a Demurrer to Petition for Dissolution and a Response.

None of the above-listed papers raised the issue of personal jurisdiction. In fact, in appellant's Opening Brief, filed March 11, 1983, he states: "If there had been no divorce in Mexico, it would be clear that the petitioner could bring an action in California, residence of the respondent, to terminate the ... marriage, and she would be entitled to temporary support and attorney's fees." (p. 2-3) Thus, appellant failed to make a timely challenge to personal jurisdiction.

Appellant now cites Cal. Civ. C. § 4356 as the basis for his claim that from the filing of his Motion to Quash,

until the denial of that motion, he was in a "protected special appearance status." (Jurisdictional Statement at 8.) That statute provides that while a Cal. C. Civ. Pro. § 418.10 motion to quash service of summons is pending, the respondent may appear in opposition to pendente lite relief (such as temporary spousal support) and such appearance shall not be deemed a "general appearance." However, Cal. Civ. C. § 4356 was not enacted until 1984. Under California law as it existed at the time Appellant filed his Motion and Quash and until the effective date of Cal. Civ. C. § 4356, opposition to motions for pendente lite orders for temporary spousal support and attorneys' fees and costs constituted a general appearance, nullifying a challenge to jurisdiction. 2 Witkin, B.D., California Procedure, 3d Ed. 1985, § 169 at p. 554. Further, appellant's Motion

to Quash was not based on a challenge of the Court's personal jurisdiction, which is the basis of a Cal. C. Civ. Pro. § 418.10 motion to quash service of summons, but rather on a challenge to the Court's subject-matter jurisdiction. Consequently, appellant cannot avail himself of the benefits of Cal. Civ. C. § 4356.

Thus, the Court had personal jurisdiction over appellant from the date of service, appellant made a general appearance thereafter, and contrary to appellant's claim, he was not in a "protected special appearance status" from the February 18, 1983 filing of his Motion to Quash until the January 14, 1986 order denying that motion and holding the Mexican divorce decree invalid.

III. THE RIGHT TO INTERSTATE TRAVEL AND THE DUE PROCESS CLAUSE DO NOT PROVIDE A RIGHT TO OBTAIN AN EX PARTE MEXICAN DIVORCE AND HAVE THAT DIVORCE RECOGNIZED IN THE STATE COURTS.

Appellant argues, without benefit of authority, that the right to interstate travel entitles him to obtain an ex parte divorce in Mexico that is binding upon the courts of the State of California. The argument hardly merits a response. While various provisions in the Constitution may prohibit the states from imposing "regulations which unreasonably burden or restrict . . . movement between the states, Shapiro v. Thompson, 394 U.S. 618, 629 (1969), the Constitution nowhere gives citizens the right to obtain ex parte divorces in foreign countries and have them recognized in the state courts of this country. The case might be different if the parties had litigated the validity of the Mexican divorce decree in the

court of a sister-state, and California refused to recognize the result of that litigation. See Sherrer v. Sherrer, 334 U.S. 343 (1948). In such a case, California's refusal to recognize the sister-state judgment would violate the Full Faith and Credit Clause, and perhaps incidentally, the right to travel between states. But that is not the case here.

Because appellant chose to obtain his ex parte divorce in the courts of a foreign country rather than the courts of a sister-state, the Full Faith and Credit Clause has no application here. Refusal of the California courts to recognize the Mexican decree is purely a matter of California law and implicates no federal constitutional guarantees.[6]

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[6]California distinguishes between judgments obtained in the courts of her
(Footnote Continued)

There is neither a constitutional provision, nor any other authority that requires California to recognize the judgment of a foreign country. See Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3rd Cir. 1971); Toronto-Dominion Bank v. Hall, 367 F.Supp. 1009 (E.D. Ark. 1973)

Because neither the right to interstate travel nor the Due Process Clause requires California to recognize an ex parte Mexican divorce decree, the decision of the appellate court should be affirmed.

IV. APPELLANT RECEIVED DUE PROCESS IN CONNECTION WITH THE AWARD OF TEMPORARY SPOUSAL SUPPORT AND ATTORNEYS' FEES.

Appellant argues that he was denied

(Footnote Continued)
sister-states, which are entitled to full faith and credit, and those obtained in the courts of foreign countries, which are subject merely to the principles of comity. See Ryder v. Ryder, 2 Cal.App.2d 426, 430 (1934).

a hearing on the probable invalidity of the Mexican decree, before the trial court entered its order requiring appellant to pay temporary support and attorneys' fees. Jurisdictional Statement at 9 and 37.

Appellant is wrong. Prior to the entry of the court's order, appellant submitted a total of five declarations, three of them before the hearing. These declarations set forth every evidentiary fact appellant relied upon in making his motion to quash the proceedings. As noted above, his attorneys also submitted no less than six legal briefs to the court regarding the validity of the Mexican decree. Further, his filing of two declarations after the hearing gave appellant a full opportunity to meet appellee's evidence. Thus, appellant had a full and complete opportunity to present all of his

evidence and meet appellee's evidence prior to the decision.

Because appellant was given an opportunity to present all of his evidence and legal arguments, and to meet all of appellee's evidence (which was entirely based on appellant's own admissions) prior to the court's decision, he was afforded due process.

CONCLUSION

Appellee respectfully submits that the questions upon which this cause depends are so literally insubstantial, so as not to need further argument, and appellee respectfully moves the court to dismiss this appeal, or, in the alternative, to affirm the judgment

entered in the cause by the California District Court of Appeal.

Dated: October 15, 1986

Respectfully
Submitted,

FRIEDMAN, SLOAN &
ROSS, P.C.

By_____
Jeffrey S. Ross
Counsel for Appellee

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serious actions of the California courts.

III THE UNITED STATES SUPREME COURT HAS A STATUTORY RESPONSIBILITY TO PROVIDE APPELLANT HIS FIFTH AMENDMENT DUE PROCESS RIGHT TO A FEDERAL COURT FORUM.

This responsibility is especially acute in light of the close relationship of the massive violations of appellant's civil and constitutional rights, the blatant unconstitutional law applied during the judicial destruction of appellant, and the close and suspicious relationship of these acts with appellant's attempts to expose a major aviation and government scandal. Title 28 United States Code Section 1257(2) provides that the United States Supreme Court shall have the responsibility of appellate review when the constitutionality of a state law--the

published decision of the California Court of Appeal, or the unconstitutional interpretation and application of state law, is appealed to the Court. Section 1257 likewise provides appellant statutory rights that are denied to him, and violated by this Court, by arbitrarily renaming the appeal of flagrantly unconstitutional California law a petition for writ of certiorari. The dismissal of appellant's appeal was forewarned by the obstructions placed in appellant's path as he sought to have the appeal docketed, and which is revealed in the correspondence with Chief Justice Rehnquist.

Appellant argued in his jurisdictional statement and reply brief that the published decision constituting California decisional law, In re Marriage of Stich (1985) 167 Cal.App.3d 226, is riddled with unconstitutional holdings totally alien to either the United

States, or any country operating under a system of law. The facts stated in those writings leave no doubt, in the minds of reasonable men, that such unconstitutional violations did occur, and threaten large segments of the divorced population of the United States with deprivations of their civil and constitutional rights more suitable to a tyrannical third world dictatorship, and does violence to the concept of justice, and civil and constitutional rights.

By its dismissal, this Court has approved the unconstitutional holdings, the judicial misfeasance and malfeasance, by the California courts.

IV THIS COURT HAS BEEN MADE AWARE OF APPELLANT'S ATTEMPTED EXPOSURE OF AN AIRLINE CRASH RELATED AVIATION AND GOVERNMENT SCANDAL, AND THE CLOSE RELATIONSHIP TO THE BIZARRE, ILLEGAL, AND UNCONSTITUTIONAL ATTACKS UPON APPELLANT'S PERSONAL

LIBERTIES, AND HIS PERSONAL AND PROPERTY RIGHTS.

Title 42 United States Code Section 1986 is again invoked by this court's knowledge of the major aviation and government scandal which is at the core of the attacks upon appellant's property and money rights. The violation of civil and constitutional rights, address the unconstitutional holdings and unconstitutional decisional law of the State of California. However, this court already knows from writings related to the docketing of this action that the constitutional rights of those who perished in fraud related airline crashes are closely related to the unconstitutional acts perpetrated against appellant.

Appellant's attempts to correct, and then to expose the crash related violations when correction was repulsed, led to a miscalculation by a high

government block, to protect, rather than to expose and correct, the crash-causing misconduct. When this criminal misuse of government facilities resulted in easily identifiable resulting airline crashes, and appellant continued his exposure attempts, including filing mandamus actions in the United States District Courts of the Ninth Circuit Court of Appeals, the complicity of silence and coverup then expanded, and with this expansion, still further airline crashes and deaths.

In another miscalculation, the government forces were then targeted directly upon appellant, rather than upon the earlier coverup. This resulted in the bizarre holdings that are now before this United States Supreme Court, which itself placed obstacles in appellant's path to a docketing of his jurisdictional statement.

The massive violations of California

and federal law, the unconstitutional interpretations and applications of state law that are far beyond the realm of error, the judicial misfeasance and malfeasance, are so severe, so numerous, so deliberate, that no reasonable person would fail to recognize their perpetration as deliberate. Appellant describes these activities in his second printing of the book, The Unfriendly Skies, an Aviation Watergate.

As appellant escalated his exposure activities in 1981 and 1982, by his appearances as guest on hundreds of radio and television shows, by his published books, and by his filing of federal mandamus actions directed to specific airline crashes and the evidence supporting the allegations of criminal fraud, the next miscalculation occurred; appellant was targeted for a "divorce" action to destroy his financial base for his costly exposure activities, although

the marriage had been legally terminated two decades earlier, and the 1966 divorce judgment is now registered and confirmed in six subsequent court jurisdictions. for the past two decades.

To perpetrate this hoax, and circumvent the protection of California, federal, and constitutional law, the bizarre and unconstitutional argument was raised that California courts would not recognize the divorce judgments rendered by courts foreign to California if the court relied upon residence for personal jurisdiction. It is on this patently unconstitutional holding that the subsequent unconstitutional attacks were perpetrated, and established in the decisional law under appeal.

It is this approval, this denial of appellant's Fifth Amendment due process rights, these violations of Fourteenth Amendment and other constitutional rights, as articulated in the published

decision of the California Court of Appeal, that appellant requests a rehearing.

CONCLUSION

This court has a responsibility. Appellant has a due process right to protection against being targeted by judicial misfeasance and malfeasance arising out of his attempts to expose a major aviation and government scandal. He has a right to expect that the United States Supreme Court will meet its responsibilities, when it is obviously apparent that all protections in law have been violated, and that appellant is in the final stages of a total destruction by the forces seeking to destroy him by massive unconstitutional violations of state law, and the arrogant rendering of patently unconstitutional decisional law.

constitutional, shirk its duty, or to extend the complicity, by misstating appellant's appeal is actually a petition

for writ of certiorari, and then dismissing appellant's appeal. As a matter of law, and constitutional responsibilities, this Court has the responsibility to hear the appeal, and lacks the discretion to turn its back on a major aviation and government scandal, and the extension of it in an attack upon a targeted United States citizen.

The California published decision is a massive and classic example of a state's judicial system trampling fundamental constitutional rights, misused to destroy a targeted United States citizen, whose only "fault" was in exercising the responsibilities and concern of a citizen and government air safety investigator.

Appellant brought to this court an appeal, over which this Court has a statutory, constitutional and moral responsibility to provide a fair and impartial forum.

The instant action will not be

resolved by a coverup by any federal court, including this Court. This court has a responsibility to reconsider its dismissal of appellant's appeal.

Dated: November 26, 1986.

Respectfully
Submitted,

_____

Rodney F. Stich
Appellant in pro se

CERTIFICATION OF GOOD FAITH

I, Rodney F. Stich, certify that this petition for rehearing is presented in good faith, and not for delay.

Dated: November 26, 1986.

_____

Rodney F. Stich

DECLARATION OF SERVICE BY MAIL

I, Kita Browne, declare under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I served by mail this Opposition to Dismiss or Affirm, on November 28, 1986, enclosing a true copy of said document in an envelope, addressed as follows:

County Counsel, Solano County
Hall of Justice Building
Fairfield, California 94533

Friedman, Sloan and Ross
407 Sansome Street, Suite 400
San Francisco, Calif. 94511

Executed on November 28, 1986 at Reno, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

_____
Kita Browne